

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3080-3081 OF 2005

COMMISSIONER OF CUSTOMS, MEERUT

Appellant(s)

VERSUS

ASHWANI KUMAR JAIN AND ANR.

Respondent(s)

(WITH CIVIL APPEAL NO.3082 OF 2005)

O R D E R

C.A. NOS.3080-3081/2005:

1. These appeals emanate from the judgment dated 18.6.2004 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi ("Tribunal", for short) in Appeal Nos.C/78-79/02-NB(A) whereby the appeal filed by the respondents was allowed and the penalty imposed upon respondent No.1 Ashwani Kumar Jain was fixed at Rs.1 crore. However, the penalty imposed upon respondent No.2 Balbir Singh Sethi was set aside by the Tribunal.

2. Mr. Mohan Parasaran, learned Additional Solicitor General appearing for the appellant contends that the impugned judgment suffers from serious infirmities. He has drawn our attention to paragraph 9 of the impugned judgment wherein the Tribunal has observed as under:

"During the hearing of the case, the learned counsel for the appellants pointed out that the penalty on Shri Balbir Singh Sethi was entirely unwarranted. He has pointed out that the show-cause notice did not even allege that Shri Sethi was part of the conspiracy. There is also no material to show that he was aware of the excess quantity or undervaluation of the goods."

3. Learned Additional Solicitor General submitted that the aforementioned findings of the Tribunal are untenable. He has also drawn our attention to the Show Cause Notice dated 5.1.2001 sent by the Directorate of Revenue Intelligence, I.P. Bhawan, I.P. Estate, New Delhi, the relevant portion of which reads as under:

"(iii) The said M/s. Meerut Exim, Meerut, Shri Ashwani Kumar Jain, Prop. M/s. Meerut Exim, Meerut, who masterminded the entire operation. Shri Balbir Singh Sethi, who was actively involved in the entire operation as an authorised signatory of M/s. Meerut Exim, Meerut, and ensured the improper clearance from Customs and subsequent storage of goods, Shri Trilok Nath Mittal, who was also actively involved in planning the operation with A.K. Jain, and later on was involved in disposing of the smuggled goods in the market knowing well that they were improperly imported goods and were liable to confiscation appear liable to penal action under Section 112(1) and (b) and/or Section 114A of the Customs Act, 1962."

4. Mr. Parasaran has also drawn our attention to the order dated 29.10.2001 passed by the Commissioner, Customs & Central Excise, Meerut, in which the learned Commissioner has clearly observed as under:

"The said M/s. Meerut Exim, Meerut, Shri Ashwani Kumar Jain, Prop. M/s. Meerut Exim, Meerut, who master minded the entire operation, Shri Balbir Singh Sethi, who was actively involved in the entire operation as an authorised signatory of M/s. Meerut Exim, Meerut, and ensured the improper clearance from Customs and subsequent storage of goods, Shri Tirlok Nath Mittal, who was also actively involved in planning the operation with A.K. Jain, and later on was involved in disposing of the smuggled goods in the market knowing well that they were improperly imported goods and were liable to confiscation are liable to penal action under Section 112(a) and (b) and/or Section 114A of the Customs Act, 1962."

5. As regards, Balbir Singh Sethi, issue No.(iii) was framed by the Commissioner of Customs & Central Excise, Meerut and the Commissioner of Customs having arrived at a clear finding of conspiracy in which Balbir Singh Sethi was involved, the Tribunal could not have arrived at the finding that Balbir Singh Sethi was not involved in the conspiracy.

6. In this view of the matter, we are constrained to set aside the impugned judgment and remit the matters to the Customs, Excise & Service Tax Appellate Tribunal. We direct the said Tribunal to decide the appeals de novo after hearing the parties. All questions are left open for the parties to be raised before the Tribunal.

7. In order to avoid further delay in the matter, we direct the parties to appear before the Tribunal on 25th October, 2010. We request the Tribunal to decide the appeals as expeditiously as possible.

8. With the aforementioned observation and direction, these appeals are disposed of.

C.A. No.3082/2005:

9. In view of the order passed by us in Civil Appeal Nos.3080-3081/2005, this appeal becomes infructuous and is dismissed as such.

.....J
(DALVEER BHANDARI)

JUDGMENT.....J
(DEEPAK VERMA)

New Delhi;
September 29, 2010.